

Jim Doyle
Governor

Helene Nelson
Secretary



State of Wisconsin

Department of Health and Family Services

DIVISION OF CHILDREN AND FAMILY SERVICES


1 WEST WILSON STREET
P O BOX 8916
MADISON WI 53708-8916

Telephone: 608-267-3905
FAX: 608-266-6836
dhfs.wisconsin.gov

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BRL FCC Memo-2005-05

To: Family Child Care Centers

From: Jill Chase, Director 
Bureau of Regulation and Licensing

RE: Requirements for Written Policies

In order to prevent tragedies like the recent death of a young toddler left in a van and to ensure that children are transported safely, you are now required to develop written policies as outlined in HFS 45.

All family child care centers must develop and implement written policies that address the items below. These policies and procedures must be in place by **September 1, 2005** and submitted to your licensing specialist along with the policy revisions required by the revisions to HFS 45. If you have already submitted the policy revisions to your licensing specialist prior to the receipt of this memo, please submit the required revisions at the next license continuation date. Please ensure that your written policies include the following:

1. a procedure to notify a parent or guardian when children are absent from the family child care center without notification as part of the policy on child and provider absence required under HFS 45.04(2)(e)3.; and
2. if you transport children or contract for transportation services, written procedures in your transportation of children policy under HFS 45.04(2)(e)8., that track children and ensure that the whereabouts of children being transported are documented from the time a child is picked up until that child is relinquished to the responsible caregiver.

You may decide which procedures will work best for your child care center. For example, you may require the driver to use a check-off list documenting the times a child has been picked up and dropped off. You may want to require the driver to review that check-off list with a provider who will confirm that all children are accounted for and that all children have safely exited the vehicle. You may also want to require the driver to include a physical walk through of the vehicle to check all seats or require the use of an alarm system requiring the driver to disable the alarm at the rear of the vehicle. You may implement one or all of these options.

Under Wisconsin's Administrative Code, children may never be left unattended in a vehicle. Children must be properly seated in a car safety seat if they are under 4 years of age or 40 pounds. Children older than 4 years of age or who weigh more than 40 pounds may be restrained in a seat belt, although the current recommendation from the National Highway Traffic Safety Administration (NHTSA) is that all children under age 8 should be in a car safety seat or booster seat to ensure their safety. HFS 45.08 (6)(b) states that children under the age of 13 may not ride in the front seat of a vehicle. All vehicles used to transport children must be inspected at least 1 time each year to ensure its safe operating condition.

The person who will be driving the vehicle must have a caregiver background check and a copy of the person's driving record must be on file at the center. If a driver has had any violations related to transportation, the center should review the circumstances of the violations closely to determine whether the person can safely transport children.

Most family child care centers do not utilize 10+ passenger vans to transport children. But, if these larger vans are used to transport children you must be aware of and follow the safety risk reduction procedures issued by the National Highway Traffic Safety Administration.*

Failure to meet all supervision and transportation rules that protect the health, safety and welfare of children in care may affect your ability to transport children or may result in sanctions and/or penalties up to, and including, revocation of your family child care license.

Please contact your licensing specialist if you have any questions about these requirements. Thank you for your efforts to protect the health, safety and welfare of children in your care.

* Attachment: Use of 10+ Passenger Vans to Transport Children to and from Schools

USE OF 10 + PASSENGER VANS TO TRANSPORT CHILDREN TO AND FROM SCHOOLS

Any programs that provide transportation for children to or from school may not use passenger vans designed to carry more than ten people (typically these are 15-passenger vans). Programs that already have these larger vans may continue to use them to transport children provided there are no more than ten people in the van including the driver. In addition, programs may not be able to purchase new passenger vans designed to carry more than 10 people for transporting children to and from school. Programs that violate the law and choose to transport children to or from school in vans carrying more than ten people including the driver are subject to a traffic citation of at least \$143.80.

The National Highway Traffic Safety Administration (NHTSA) is responsible for enforcing the law that prohibits automobile dealers from selling certain vehicles designed to carry more than ten people to schools or other programs that transport school children. The law also prohibits schools and other programs from using these large passenger vans to transport students.

Background

For a number of years, the law was interpreted federally to apply only to school districts. Other programs that provided transportation to and from schools were able to purchase large passenger vans. In the early 1990's, NHTSA changed the interpretation of the law and decided that all programs that transport children to or from school or school-related events do, in fact, fall under the law. With this interpretation, automobile dealers are, in effect, prohibited from selling new large passenger vans to any agency if the program will use the van to transport children to and from a public or private school (and dealers face a \$10,000 penalty if they do so). Programs that transport children to and from school are prohibited from using large passenger vans if the van carries more than ten people including the driver.

The Wisconsin State Patrol (and possibly other law enforcement agencies as well) may issue traffic citations to programs that transport children to and from schools in vehicles that carry more than ten people including the driver. These citations are for using a vehicle that does not meet the definition of a school bus under s. 340.01(56), Wis. Stats., or does not qualify as an "alternative vehicle" under s. 121.555, Wis. Stats.

Other Options

There are other options that programs can choose if they want to offer transportation to and from schools.

- Purchase school buses.
- Use smaller vehicles (i.e. mini-vans or cars).
- Carry no more than ten people including the driver in a van that has the capacity to carry more passengers.
- Arrange for the school system's buses to pick up and drop off children at the program.

Programs may also want to consider discontinuing the school transportation service.

Transporting Children on Field Trips

Programs are not prohibited from using larger 10+ passenger vans filled to capacity for activities such as field trips for children enrolled in the program. However, the State Patrol recommends that only smaller vehicles or school buses be used because the larger vans (when filled to capacity) pose a significant risk of a roll-over accident.

The National Highway Traffic Safety Administration has determined that school buses are much safer for children than are large vans. Therefore, programs that transport children may be faced with liability concerns that were not an issue in the past if the program continues to use large vans for the transportation of any children. Should a vehicle used to transport children be involved in an accident, attorneys representing children or adults in the accident may cite the safety statistics.